IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of:	)	No. 61597-1-I
JUNKO KOGA,	)	DIVISION ONE
Respondent,	)	
v.	)	
KOJI YOSHIDA and TOSHIKO YOSHIDA, in their individual capacity and as husband and wife,	)	UNPUBLISHED
	)	FILED: May 18, 2009
Appellants.	)	

Cox, J. – Koji Yoshida and Toshiko Yoshida appeal a substantial money judgment against them in favor of Junko Koga, a resident of Japan. We conclude that Koga had standing to bring this action and that the statute of limitations does not bar her breach of contract claim. We also conclude that substantial evidence supports the challenged findings and these findings support the conclusions of law. Finally, the court properly exercised its discretion when it denied the motion for a new trial. We affirm.

In April 2000, Junko Koga, a resident of Japan, met Koji Yoshida for the first time in Tokyo, Japan. In phone calls following this meeting, they discussed

investment opportunities and how Koga might invest some of her money in the United States. According to Koga, Yoshida told her that his construction company had 30 percent profits and that there was no way she could lose any money if she invested in fixed assets.

In August, they met again in Japan. At that time, Koga withdrew 20 million Japanese yen from her bank and gave it to Yoshida to invest for her in the United States. Yoshida wired 19 million yen to his bank in the United States and took the other one million yen on his person. In September, Koga accompanied Yoshida back to his home in the Seattle area. At that time, Yoshida wrote a written receipt acknowledging the money he had received from Koga. The receipt indicated that the money would be used for investing in real estate.

During this same visit, Koga inquired about having her son come to live with the Yoshidas in order to study classical piano in the United States. In early 2001, Koga's son moved in with the Yoshidas. The Yoshidas cared for her 16-year-old son for $600 per month plus his expenses. Expenses, including tuition, lessons, and a car, were estimated at $36,229 for the first year.

In November, Koga met Yoshida again in China and transferred $24,000 (in U.S. dollars) to Yoshida. The earlier-written receipt was amended to reflect the additional $24,000 received for investment. Thus, the total investment was the equivalent of $207,800.

Koji Yoshida testified at the trial in this case that he agreed to invest

Koga's money for her but that he did not have a plan for investing it at the time he received it. He testified that he understood that Koga was interested in quickly getting the money out of Japan and hiding it from her husband. He also testified that he took Koga's money in order to buy her a home in the United States. Later, according to Yoshida, Koga told him to invest in the stock market. He testified that he invested $150,000 of Koga's money in the market. He did not explain whether he invested any of Koga's other money.

Apparently, in about August 2001, the Yoshidas requested more money from Koga to support her son, who was then living with them. At that time, Koga indicated she would need to use some of the money she had transferred to the Yoshidas for investment for her son's expenses. In response, the Yoshidas indicated that the money had been invested and to withdraw money would cause losses. Koga inquired whether she could receive return of the invested funds within two years of 2001. In reply, the Yoshidas indicated that they would return her money in about two years—November 2003.

By November 2003, Koga wanted her money returned but the Yoshidas did not return it. A dispute arose, and Koga told friends and acquaintances of the Yoshidas about the dispute in the hope they would do something to help resolve it. Koga testified that she discussed with others that she had "romantic relations" with Koji Yoshida and told them about her financial relationship with him. The Yoshidas did not return any money to Koga.

In March 2005, Koji and Toshiko Yoshida dissolved their marriage.

Koga commenced this action against Koji and Toshiko Yoshida and Koji Yoshida's company, Shin-O Engineering, LLC, on September 5, 2006. She alleged breach of contract and conversion. Koji Yoshida counterclaimed, asserting a defamation claim against Koga.

In a bench trial, the judge found in favor of Koga on her breach of contract claim and also determined that the defamation claim was not proven. The court entered written findings and conclusions following the trial. The court also denied a post-trial motion for a new trial based on alleged irregularities in the proceedings involving one of the interpreters at trial.

The Yoshidas appeal.

STANDING

The Yoshidas argue that Koga did not have standing to sue to recover a portion of the invested funds because 20 million Japanese yen was her husband's separate property. Because the Yoshidas neither pleaded nor proved any applicable law other than that of Washington and have also failed to meet their burden to show by clear and convincing evidence that this portion of the funds was the separate property of Koga's husband, we disagree.

Civil Rule for Superior Court 9(k)(4) provides:

> If no party has requested in his pleadings application of the law of a jurisdiction other than a state, territory or other jurisdiction of the United States, the court at time of trial shall apply the law of the State of Washington unless such application would result in manifest injustice.

In Washington, either spouse may sue to recover community property.[1]

Generally, courts presume that an asset in the hands of a married person is community property.[2] This presumption can be overcome only by clear and convincing proof to the contrary, and the burden of proof is on the party claiming the separate nature of the property.[3]

We review a trial court's findings of fact for substantial evidence.[4] Where a finding of fact is based on conflicting evidence and there is substantial evidence to support it, an appellate court will not substitute its judgment for that of the trial court.[5] We review questions of law and conclusions of law de novo.[6] The characterization of property as separate or community is a question of law.[7]

The trial court's Finding of Fact 2.17, entitled "STANDING," states:

> $24,000 of the money at issue was Plaintiff Junko Koga's.
>
> The balance of the money at issue in this case, 20,000,000 Japanese yen (approximately $183,800) came from an account that was part her money and part her husband's money.
>
> ***There was no dispute over the fact Plaintiff Junko Koga had***

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[1] RCW 4.08.030.

[2] See Brewer v. Brewer, 137 Wn.2d 756, 766-67, 976 P.2d 102 (1999) ("[T]his Court has favored characterizing property as community instead of as separate property unless there is clearly no question of its character.").

[3] Beam v. Beam, 18 Wn. App. 444, 452, 569 P.2d 719 (1977).

[4] Sunnyside Valley Irr. Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

[5] Beeson v. Atlantic-Richfield Co., 88 Wn.2d 499, 503, 563 P.2d 822 (1977).

[6] Sunnyside, 149 Wn.2d at 880.

[7] In re Marriage of Skarbek, 100 Wn. App. 444, 447, 997 P.2d 447 (2000).

the authority over the money at issue.[8]

These findings are supported by substantial evidence. At trial, when Koga was asked about the source and ownership of the 20 million Japanese yen, she testified that the money included money she had earned as well as money her husband had saved for her. She also testified, "This money was money belonging to my husband and myself." Koga testified that she kept the transfer of this money a secret from her husband for some time because she feared he would not agree to it.

Under cross-examination, she testified that the 20 million Japanese yen was money that her husband's mother gave to him, and that her husband had asked her to take care of it. She also stated that the $24,000 was from funds she had saved from her own work.

The Yoshidas make much of Koga's testimony that her husband had received the money from his mother. They argue this testimony is "clear in identifying the 20 million Japanese yen" was her husband's ***separate*** property. We are unpersuaded by this argument.

First, it is unchallenged that Koga is a resident of Japan, not Washington. Thus, the community property law of this state would ordinarily have no application to her or her husband, residents of Japan. From our review of this record, we seriously doubt that Koga has ever heard of "community property" or "separate property," as those legal terms are used for purposes of the

[8] Clerk's Papers at 119 (emphasis added).

community property law in Washington. It is undisputed that she never used either term during her testimony.

Second, the Yoshidas' failure to plead and prove that law other than that of Washington applies to this case means that the law of this state applies to their argument on this point. That law is fatal to their argument.

The Yoshidas' attempt to seize on certain words in Koga's trial testimony to build the argument that some of the invested funds were the separate property of Koga's husband falls well short of their burden to show by clear and convincing evidence that the character of the property is separate. Even if the property was initially separate property when received, we know nothing of how it was treated thereafter. For example, if the property was comingled at the bank from which Koga withdrew the funds, the character of the property would be community absent a showing of tracing to show its characterization as separate continued, something that is not in this record.

Viewing the evidence in this record in light of the presumption that an asset in the hands of a married person is community property unless proven otherwise, the judge properly resolved the question in favor of Koga's authority over the funds at issue in this case. The Yoshidas have failed to overcome their burden to show by clear and convincing evidence that the funds at issue are not community property. Accordingly, Koga has standing to sue to recover all of the invested funds.

Citing In re Marriage of Skarbek,[9] the Yoshidas argue that Koga had the

burden to show the money was not separate property. They are wrong.

Skarbek addressed whether money acquired before marriage that was placed in a joint savings account after marriage had been transferred to the community.[10] There, the court held that it had not been transferred because the separate nature of the money had been established and the owner of the separate property met his burden by "clearly and convincingly" tracing the separate source of the funds.[11]

Skarbek is not applicable here. There is no showing here of any tracing that would have established that the allegedly separate character of the 20 million Japanese yen had been preserved. Under Washington law, it was the Yoshidas' burden to prove by clear and convincing evidence that the presumption characterizing the property as community property did not apply.

The trial court properly determined that Koga had standing to bring this action for all of the funds that were to be invested.

CONSIDERATION

The Yoshidas argue that the agreement to invest Koga's money was not supported by consideration and, therefore, the agreement is not enforceable. We disagree.

Generally, to be enforceable, a contract must be supported by

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[9] 100 Wn. App. 444, 448, 997 P.2d 447 (2000).

[10] Id. at 449.

[11] Id.

consideration.[12] To constitute consideration, a performance or a return promise must be bargained for.[13] A performance or return promise is bargained for if it is sought by the promisor in exchange for the promise and is given by the promisee in exchange for that promise.[14] A promise is supported by consideration if "the promisee, in return for the promise, does anything legal which he is not bound to do . . . whether there is any actual loss or detriment to him or actual benefit to the promisor or not."[15] A unilateral contract is one in which a promise is given in exchange for an act or forbearance.[16]

We review the trial court's findings of fact following a bench trial for substantial evidence.[17] We review questions of law and conclusions of law de novo.[18] Whether a contract is supported by consideration is a question of law.[19]

Here, the Yoshidas do not challenge Finding of Fact 2.6. Thus, it is a

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[12] Restatement 2d Contracts § 17 (2009).

[13] Restatement 2d Contracts § 71 (2009).

[14] Id.

[15] Harris v. Johnson, 75 Wash. 291, 295, 134 P. 1048 (1913) (internal quotations omitted); see also, Chopot v. Foster, 51 Wn.2d 406, 410, 318 P.2d 976 (1957) (holding that a lease that lacked mutuality at the time of execution became binding on the lessor when the lessee constructed buildings, which by terms of the lease, could not be removed).

[16] Browning v. Johnson, 70 Wn.2d 145, 148, 422 P.2d 314 (1967).

[17] Sunnyside, 149 Wn.2d at 879.

[18] Id. at 880.

[19] Nationwide Mut. Fire Ins. Co. v. Watson, 120 Wn.2d 178, 195, 840 P.2d 851 (1992).

verity for purposes of appeal.[20] Finding of Fact 2.6 states:

> UNDERSTANDING OF THE PARTIES' AGREEMENT AS TO THE MONEY.
>
> Plaintiff Junko Koga and Defendant Koji Yoshida understood that he would invest the money at issue in this case into a real estate operation on behalf of Plaintiff Junko Koga.
>
> This transaction was never intended by either party to constitute a loan.
>
> The money at issue was not transferred to Defendant Koji Yoshida to hold, as it would be to a bailee, but to actively manage as investment into a real estate operation.[21]

Finding of Fact 2.7, which is a conclusion of law, states:

> CONSIDERATION OF THE PARTIES' AGREEMENT.
>
> There is a valid consideration in the parties' agreement that makes the parties' agreement an enforceable contract due to the parties' above mutual understanding in 2.6 and Plaintiff Junko Koga's performance in transferring the funds in reliance on Defendant Koji Yoshida's representation that his business was capable of earning a 30% return on investments.[22]

The Yoshidas argue that there is no consideration because "nothing was given or promised by Koga in exchange for Yoshida's promise to invest the money."[23]

At trial, Koga testified that Koji Yoshida told her that his construction business generated 30 percent profits. He told her that if she invested in his

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[20] Fuller v. Dep't of Empl. Sec., 52 Wn. App. 603, 606, 762 P.2d 367 (1988).

[21] Clerk's Papers at 117.

[22] Clerk's Papers at 117.

[23] Brief of Appellant at 24-25.

company, in "fixed assets," she would not lose money and that she "would do very well." Koga testified that she transferred a total of $207,800 to the Yoshidas in reliance on Koji's promise that her money would not be lost. Koga also testified that the receipt that Koji gave to her after he received the monies stated that the entire amount would be used for purchasing fixed assets or real estate. The record also contains a copy of the receipt to Koga, signed by Koji Yoshida, which states in relevant part: "I certify that I am in receipt of the above amount. I shall be fully responsible for investing it into real estate operation."

This evidence supports the conclusion of law that consideration for the contract existed, as reflected in "Finding of Fact" 2.7. The foregoing evidence in unchallenged Finding 2.6 is sufficient to persuade a fair-minded rational person that Koga transferred the monies in reliance on Koji Yoshida's promise to invest the funds in real estate coupled with the representation of 30 percent profits. That, in turn, supports the conclusion in 2.7 that consideration existed.

Here, in reliance on Koji Yoshida's representation, Koga took her money from the bank and transferred it to the Yoshidas. Koga transferred her monies to the Yoshidas, something she had no legal obligation to do, in exchange for his promise to invest the money in real estate. As the trial court properly concluded, Koga's act of transferring the monies constitutes consideration to support the agreement.

In their reply, the Yoshidas argue that Koga did not provide any act or

make a return promise in exchange for their promise "to hold and invest the money." In making this argument, the Yoshidas have recharacterized their promise as being made after Koga transferred the money to them. However, unchallenged Finding of Fact 2.6 indicates that the judge did not believe that Koga transferred the money to the Yoshidas as a loan or for them to hold. This finding negates the Yoshidas' argument.

Similarly, the Yoshidas do not assign error to the judge's findings as to the nature of the parties' agreement (Findings of Fact 2.6, 2.12). They do not challenge the court's Conclusions of Law that the Yoshidas owed Koga a contractual and fiduciary duty (Conclusion 3.2/Finding of Fact 2.9) or that the Yoshidas breached that duty (Conclusion 3.3/Finding of Fact 2.14).

Nevertheless, the Yoshidas argue that "the trial court erred in concluding that a contract was formed." For the reasons we have stated they are simply wrong.

Citing Dephillips v. Zolt Construction,[24] the Yoshidas argue that the receipt Koji gave to Koga cannot be the basis for a breach of contract claim because it does not contain the essential elements of a contract. But, it is apparent from this record that the court relied on more than the receipt in concluding that an enforceable agreement between the parties existed. The Yoshidas cite to no authority preventing the judge from considering all the evidence in making this determination. That the receipt, alone, is not an

[24] 136 Wn.2d 26, 31, 959 P.2d 1104 (1998).

enforceable contract is not dispositive here.

In addition, the record contains ample evidence of a breach of this agreement. Neither party disputes that Koga gave the Yoshidas the money. The receipt and discussion between the parties shows that the money was to be invested in real estate. Koji Yoshida testified that he invested some of Koga's money in the stock market. Koga testified that she never received the return of any of her money from the Yoshidas.

STATUTE OF LIMITATION

The Yoshidas argue that the court erred in concluding that Koga's claim is not time barred. We disagree.

The Yoshidas challenge Finding of Fact 2.16, which states:

> STATUTE OF LIMITATION.
>
> The statute of limitation for Plaintiff Junko Koga's claim for breach of contract has started from November 2003.
>
> Her complaint was filed in September 2006.
>
> Plaintiff Junko Koga was unaware of any breach until November 2003 when she expected to recover her money at issue in this case and was refused by Defendants.[25]

They also challenge Conclusion of Law 3.6, which states:

> STATUTE OF LIMITATION.
>
> The September 2006 filing of the complaint occurred well within the

[25] Clerk's Papers at 119.

applicable statute of limitations.[26]

Here, substantial evidence supports the trial court's findings. The record shows that Koga first asked the Yoshidas to return the invested money in November 2001. In reply, the Yoshidas said they could return it in about two years. Two years from the time of that communication would have been approximately November 2003. Koga testified that she agreed to wait two years for her money but that the Yoshidas never returned any of her money. Koga filed her claim against the Yoshidas on September 5, 2006.

In turn, these supported findings support the trial court's conclusions.

Actions upon unwritten contracts or liability arising from unwritten contracts are subject to a three-year statute of limitations.[27] Generally, the statute of limitations in a contract action begins to run at the time of breach.[28]

Based on its findings, the trial court properly concluded that the statute of limitations on Koga's breach of contract claim began to run when the Yoshidas did not return her money in November 2003. The findings also support the court's conclusion that Koga commenced her suit within the required three-year period.

The Yoshidas argue that the statute of limitations began to run in June

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[26] Clerk's Papers at 121.

[27] RCW 4.16.080 (3); Pietz v. Indermuehle, 89 Wn. App. 503, 515-16, 949 P.2d 449 (1998).

[28] Wm. Dickson Co. v. Pierce Co., 128 Wn. App. 488, 495, 116 P.3d 409 (2005).

2001 rather than November 2003. They point to Koga's testimony that she began to have concerns about how her money was being handled by the Yoshidas as early as June 2001. Their argument is unpersuasive. Koga testified she agreed to wait until November 2003 for her money. Only after that point was Koga entitled to receive her money.

DEFAMATION

Koji Yoshida argues that his reputation and business were harmed by Koga's statements that she and Koji Yoshida had sexual relations. This counterclaim has no merit, and the court properly found in favor of Koga on this claim.

To prevail on a claim of defamation, a plaintiff must establish falsity, an unprivileged communication, fault, and damages.[29] Where the plaintiff is a private individual, the negligence standard of fault applies.[30]

A statement may be defamatory per se and, therefore, actionable without proof of special damages, if it "(1) exposes a living person to hatred, contempt, ridicule or obloquy, or to deprive him of the benefit of public confidence or social intercourse, or (2) injures him in his business, trade, profession or office."[31] The fact finder should determine whether the statement was defamatory per se, in all

[29] Caruso v. Local Union No. 690 of Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 100 Wn.2d 343, 352, 670 P.2d 240, 244-45 (1983).

[30] Id.

[31] See id. at 353.

but extreme cases.[32]

At trial, Koga testified that she had told others that she had "romantic relations" with Koji Yoshida. She also testified that she had disclosed to others the nature of their financial relationship and that he had not done what he agreed to do.

Koji Yoshida testified that Koga had told his friends in Japan and the United States about a sexual relationship between them and had made allegations that he financially swindled her. He testified that Koga started these rumors after he had rejected her sexual advances and refused to help her arrange a sham marriage so she could come to the United States. He also testified that because of Koga's rumors, his reputation was destroyed in Japan within a church group there. He testified that three members of his church group in the Seattle area quit attending because of these rumors. He also testified that his business lost projects valued at approximately $360,000, which he believed to be the result of Koga's rumors.

Significantly, Yoshida's only evidence of damages is testimony that ***he believed*** that, as a result of Koga's statements, members left his church, his invitation to speak to a church group in Japan was revoked, and he lost $360,000 in business. Similarly, Yoshida testified that he believed that he would still be married if not for Koga's rumors.

Yoshida offered no evidence from the church members, the Japanese

[32] See id. at 354.

church group, or former business clients showing that Koga's statements affected their decisions. Moreover, Toshiko Yoshida did not testify that Koga's statements caused the divorce. She testified that it was Koga's presence and behavior that led to the dissolution of her marriage.

The trial court's findings are supported by substantial evidence. The trial court found that Koji Yoshida

> was unable to identify any financial loss suffered by him or his business due to alleged statements by Plaintiff Junko Koga.
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> The only damage alleged . . . was the cancellation of a prospective appearance by him before a religious group in Japan.
>
> . . . .
>
> There was no evidence that Defendant Koji Yoshida suffered any actual damage as a result of Plaintiff's statements.[33]

In addition, the trial court found that there was little or no doubt that Koji Yoshida had lied to Koga and had misappropriated the money at issue.[34] The trial court also expressly found that it made "no finding on whether a sexual relationship did or did not exist."[35]

These findings also support the court's conclusion that Yoshida failed to prove his defamation claim. Because Yoshida produced no persuasive evidence showing that any harm to his business or reputation was caused by ***any of the statements*** made by Koga, his defamation claim fails.

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[33] Clerk's Papers at 120.

[34] Id.

[35] Id.

Alternately, Yoshida argues that Koga's statements were "defamatory per se" and that he does not need to prove damages to prevail. He argues that the evidence shows his "business was harmed and that he has been subjected to hatred, contempt, and ridicule depriving him of public confidence and social intercourse."[36] Although Yoshida apparently argued this theory below, the trial court did not find Koga's statements defamatory per se. Rather, the trial court's only findings regarding alleged damages are those listed above. An appellate court does not weigh evidence, find facts, or substitute its opinion for those of the trier of fact.[37] Accordingly, without such a finding by the trial court, Yoshida's defamation per se argument fails.

MOTION FOR A NEW TRIAL

The Yoshidas argue the trial court wrongly denied their motion for a new trial because Mr. Lai, a Mandarin Chinese interpreter, allegedly coached the plaintiff in her testimony and is unqualified. They contend this constitutes an irregularity in the proceedings or misconduct by the prevailing party, entitling them to a new trial. We disagree.

A motion for a new trial under Civil Rule 59(a)(1) and (2) may be granted when irregularities in the proceedings of the court or misconduct of the prevailing party materially affects the substantial rights of a party. We review a

[36] Brief of Appellant at 26-27.

[37] See Thorndike v. Hesperian Orchards, Inc., 54 Wn.2d 570, 572, 343 P.2d 183 (1959) (the appellate court does not review de novo disputes of facts even if all the evidence is before it).

trial court's decision on a motion for a new trial for an abuse of discretion.[38]

Here, the alleged irregularity occurred during the plaintiff's testimony on the first day of trial. During Koga's testimony, the interpreter, Mr. Lai, translated her answers from Mandarin to English. Defendant Koji Yoshida speaks fluent Mandarin Chinese and was present during the entire trial. According to Koji Yoshida, Lai did not directly translate Koga's words—instead, he told her in Mandarin that she should answer a question differently. Defense counsel objected to Lai's alleged coaching immediately following Koga's testimony and requested a different interpreter.

Koji Yoshida testified the same day that he had the impression that the interpreter kept talking with Koga after she answered a question. It appeared to him that Koga and the interpreter continued talking and she then provided an additional answer, which Lai interpreted.

The next day, the trial court agreed to allow defense counsel to question Lai about the incident and his qualifications. When questioned, Lai explained his interpreting process to the court, which included writing the testimony down word for word prior in order to be sure his interpretation was accurate. Lai testified that he did not assist Koga with her answers, suggest any words to her, or add anything to her answers.

Regarding his qualifications, Lai testified that he studied Mandarin at the Chinese University of Hong Kong and had practiced and learned Mandarin when

[38] Brundridge v. Fluor Federal Services, Inc., 164 Wn.2d 432, 454, 191 P.3d 879 (2008).

visiting Taiwan for about 20 days. In addition, he told the court that he interpreted Mandarin in court, for depositions, and used the language frequently. Lai also told the court that he was a certified court interpreter in the Cantonese Chinese dialect, but that he was not certified by the court in Mandarin. He also testified that there are no certified Mandarin interpreters in the State of Washington.

Lai also indicated that he had communicated through e-mail with Koga about four times regarding when the next hearing would take place.

After asking some of its own questions, the trial court found that Lai was a qualified interpreter who performed his duties in accordance with the special oath given to him as an interpreter. Accordingly, the court denied the Yoshidas' motion to replace him.

After the trial, the Yoshidas brought a motion for new trial, alleging Lai's coaching as permitted by the court constituted irregularities in the proceedings and misconduct by the prevailing party.

In his declaration supporting the motion, Koji Yoshida stated there was more than one instance where this alleged coaching occurred. However, he specifically described only one instance -- when Koga was asked about the money she had in a bank in Tokyo. Significantly, Koji Yoshida did not explain or offer any evidence of what he heard as to how Koga's answers changed as a result of Lai's alleged coaching. His declaration asserts only that it appeared to him that the interpreter coached Koga. He also stated that he believed Koga's

testimony was "not her own, authentic testimony." In addition, he alleged that Koga and the interpreter had an "apparent friendship" evidenced by e-mail communications between them prior to trial. He also asserted that, based on his own knowledge of Mandarin, much of Mr. Liu's interpreting was incorrect.

The Yoshidas also supported their motion with a declaration from Martha Cohen, an employee of the King County court's Office of Interpreter Services. Cohen stated that her office had a number of Mandarin interpreters that it regularly recommends. She also stated and that the office recommends Lai as a Cantonese interpreter but has no information about his Mandarin interpreting skills.

The trial court denied Yoshida's motion for new trial.

On appeal, as in their motion for a new trial, the Yoshidas argue that the court's decision to allow Lai to interpret for Koga constituted a significant trial irregularity and misconduct by the prevailing party. We disagree.

First, the Yoshidas argue that Lai's conduct as interpreter was not consistent with legislative intent. The Washington statute governing the appointment of interpreters, RCW 2.43.030, requires that

> (1) Whenever an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a certified or a qualified interpreter to assist the person throughout the proceedings.
>
> . . . .
>
> (b) Beginning on July 1, 1990, when a non-English-speaking person is a party to a legal proceeding, or is subpoenaed or summoned by an appointing authority or is otherwise compelled by

> an appointing authority to appear at a legal proceeding, the ***appointing authority shall use the services of only those language interpreters who have been certified by the administrative office of the courts, unless good cause is found and noted on the record*** by the appointing authority. . . .[39]

The Yoshidas argue that the Office of Interpreter Services could have provided qualified Mandarin interpreters, that Lai was not qualified, and, thus, the court should not have permitted him to continue. Significantly, the Yoshidas do not argue that the trial court failed to make a good cause determination before appointing Lai under the circumstances here.

Here, regardless of whether other interpreters may have been available, the trial court had the authority under the RCW 2.43.030(1)(b) to appoint Lai after evaluating his qualifications and determining he was qualified.[40] The record shows that the trial court questioned Lai, found he was a qualified Mandarin interpreter, and appointed him. Although the court should have made a "good cause" determination on the record as the statute requires, it is apparent that the trial court believed that no interpreters "certified" in Mandarin could be obtained to interpret that day—Lai testified that he was sure there were no "certified" Mandarin interpreters in Washington.

Next, the Yoshidas argue that Lai's conduct violated the code of conduct for court interpreters as required in CR 11.2. GR 11.2 states in relevant part,

> (b) A language ***interpreter shall interpret or translate the material thoroughly and precisely, adding or omitting nothing***,

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[39] (Emphasis added.)

[40] See RCW 2.43.030(1)(b).

> and stating as nearly as possible what has been stated in the language of the speaker, giving consideration to variations in grammar and syntax for both languages involved. A language interpreter shall use the level of communication that best conveys the meaning of the source, and shall not interject the interpreters personal moods or attitudes.
>
> . . . .
>
> (d) ***No language interpreter shall render services in any matter in which the interpreter is a*** potential witness, associate, ***friend***, or relative of a contending party, unless a specific exception is allowed by the appointing authority for good cause noted on the record. . . .[41]

The Yoshidas argue that a series of e-mails show that Koga "hand-picked" Lai to replace the court-recommended Mandarin interpreter used earlier in the day. They also argue that the e-mails reveal that Lai is a friend, not a disinterested interpreter.

However, the Yoshidas read too much into these e-mail communications. Nothing in these e-mail communications shows that Lai violated the court interpreter's code of conduct. A fair reading of the six e-mails shows that they were professional in nature and related to scheduling interpreter services for days that the Office of Interpreter Services could not provide a Mandarin interpreter.

The e-mails suggest that Lai discussed his services for this trial with Koga at some point. One e-mail states, "I shall discuss [possibly interpreting] with Mdm Junko Koga when she arrives Sunday morning."[42] Another of Lai's e-mails

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[41] (Emphasis added.)

[42] Clerk's Papers at 189.

states, "Mdam Junko Koga told me that there is a hearing on March 3 that might need my service. . ."[43] But nothing in the e-mails suggests that Lai and Koga are friends. Although Lai's e-mails are signed "Thank you and my best regards" and "Thank you and best of luck in the case," read in context, these salutations do not support the Yoshidas' contention that Lai was somehow supportive of Koga's position in the lawsuit and had an interest in the case.

Citing United States v. Jose Noel Garcia,[44] the Yoshidas argue that the court erred in determining that Lai had interpreted fairly and accurately. That case is distinguishable. In Garcia, the Ninth Circuit was confronted with the issue of whether the use of an interpreter who was a co-conspirator in a drug prosecution violated the Confrontation Clause of the United States Constitution and hearsay rules.[45] Those matters are simply not at issue in this case. Thus, there is no reason for us to adopt the rules set forth in that case and those on which it relies.

Finally, the Yoshidas also argue that because Koga testified at trial through an allegedly unqualified interpreter who coached her responses, they were denied substantial justice. They contend that contract and other legal terms have precise meanings in English and are not easily translated into Mandarin or Japanese. Given the nature of this proceeding, they contend it was

[43] Clerk's Papers at 190.

[44] 16 F.3d 341 (9th Cir. 1994).

[45] Garcia, 16 F.3d at 342, 344.

"imperative" to have accurate interpretation, which they did not receive.

The Yoshidas' argument is unpersuasive. Because Koji Yoshida speaks and understands fluent Mandarin, it is difficult to understand how any alleged inaccuracy in the translation of Koga's testimony could have disadvantaged him. Moreover, to the extent the Yoshidas suggest that Koga was prevented from giving her own "authentic testimony" at trial, it is unclear how this would make the trial unfair for the Yoshidas. Furthermore, the specific allegation of coaching that Koji Yoshida details in his declaration pertained to whether, in withdrawing money from her bank, Koga removed a cashier's check-type instrument or cash from the safe deposit box. This is an immaterial detail, considering neither party disputed that Koga ultimately transferred 20 million Japanese yen and $24,000 to the Yoshidas.

In sum, because the Yoshidas cannot show that the trial court improperly appointed Lai after finding him qualified, or that the interpreter violated his code of conduct, they fail to show that irregularities or misconduct occurred. Similarly, they cannot show how the alleged irregularities or misconduct denied them substantial justice. Thus, a new trial is not warranted, and the trial court did not abuse its discretion in denying their motion.

We affirm the final judgment.

Cox, J.

WE CONCUR:

Leach, J.

Dwyer, J.